

AMENDED IN ASSEMBLY JUNE 22, 2004

AMENDED IN ASSEMBLY JUNE 14, 2004

AMENDED IN SENATE APRIL 30, 2003

SENATE BILL

No. 429

Introduced by Senator Torlakson

(Principal coauthor: Assembly Member Richman)

(Coauthors: Senators Alpert, Cedillo, Denham, Ducheny, and McPherson)

(Coauthors: Assembly Members Aghazarian, Benoit, Bermudez, Campbell, Canciamilla, Chavez, Firebaugh, Shirley Horton, Houston, Matthews, Oropeza, Parra, and Wyland)

February 20, 2003

An act to add and repeal Section 12079 of the Government Code, to amend Section 42321 of, and to add and repeal Section 42322.7 of, the Health and Safety Code, and to add ~~and repeal~~ Chapter 6.7 (commencing with Section 25580) ~~of to~~ Division 15 of the Public Resources Code, relating to public resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 429, as amended, Torlakson. Energy resources: petroleum infrastructure projects: permits: process.

(1) Existing law requires the State Energy Resources Conservation and Development Commission to report to the Governor and the Legislature regarding the state's petroleum supply and pricing.

This bill would require the Governor to appoint, until January 1, 2010, a statewide petroleum infrastructure facilitator in the commission to investigate and intervene in rulemaking, permitting, and other proceedings by state agencies that affect petroleum infrastructure

projects in the state, and to suggest best practices and procedures for permit streamlining.

The bill would require ~~all state agencies~~ *a state agency that adopts regulations, issues permits, or conducts other proceedings that affect petroleum infrastructure projects*, not more than 90 days after the Governor appoints the statewide petroleum infrastructure facilitator, to (1) identify and list all permits required by the agency for petroleum infrastructure projects and related facilities in the state; (2) describe all current procedures utilized in practice for streamlining and expediting permitting for petroleum infrastructure projects; and (3) identify and list all laws, rules, regulations, policies, guidelines, and permit conditions that inhibit or restrain petroleum infrastructure prospects.

The bill would require the statewide petroleum infrastructure facilitator, not more than 120 days after ~~appointment~~ *receiving the information specified above*, to (1) compile and, upon request, make available to persons proposing to modify, construct, or operate petroleum infrastructure projects, all available guidance documents and other information on permitting petroleum infrastructure projects; (2) upon request of applicants, provide permitting assistance to persons proposing to modify, construct, or operate petroleum infrastructure projects, including assistance in working with local governments in ensuring that local permits, land use authorizations, and other approvals made at the local level are undertaken in the most expeditious manner feasible without compromising public participation or environmental protection; and (3) upon request of applicants, intervene and participate as a party in rulemaking, permitting, and other proceedings by a state agency that affect petroleum infrastructure projects, to streamline the process, preserve existing petroleum infrastructure efficiencies and capacity, and increase petroleum infrastructure efficiencies and capacity.

The bill would require the State Air Resources Board (state board), on or before February 1, 2005, and until January 1, 2010, to consult with the California Air Pollution Control Officers Association, the California Environmental Protection Agency, the Resources Agency, the State Energy Resources Conservation and Development Commission, the United States Environmental Protection Agency, other states, public and private regulated entities, and other interested persons regarding successful methods and best practices for streamlining air quality permits and other permits that may be required for petroleum infrastructure projects.



The bill would require the state board, on or before ~~March 1~~ June 30, 2005, to identify permit streamlining practices, including successful practices implemented by the districts under certain provisions of existing law, and *would authorize the board to* adopt a complete list of permit streamlining techniques, including specified provisions, procedures, and requirements. The bill would ~~require~~ *authorize* the state board to require the districts to adopt, no later than May 1, 2005, and implement, no later than July 1, 2005, the permit provisions and procedures identified by the state board, thereby imposing a state-mandated local program by imposing new duties upon local air districts.

The bill would require the commission, on or before February 1, 2005, and until January 1, 2010, to initiate consultations with the statewide petroleum infrastructure facilitator, the California Environmental Protection Agency, the Resources Agency, the United States Environmental Protection Agency, other states, air districts, public and private regulated entities, California ports, and other interested persons, regarding successful methods and best practices for streamlining permits, leases, and other governmental authorizations and entitlements that may be required by petroleum infrastructure projects. The bill would require the consultation to include a complete report of agencies' and the regulated entities' experiences with facility siting conducted by the commission, similar processes in other states, and similar processes in this state.

The bill would require the commission, on or before ~~March 1~~ June 30, 2005, to identify permit streamlining practices, including successful practices implemented by the State Air Resources Board under the provisions of the bill described above, and to publish for public comment a complete list of permit streamlining techniques for petroleum infrastructure projects, including certain, specific techniques.

The bill would require the commission, on or before ~~May 1~~ December 31, 2005, to submit a report to the Governor and the Legislature describing the results of the consultation and the specified list, together with detailed recommendations for establishing new, streamlined processes for permitting petroleum infrastructure projects in California ~~in a manner that accomplishes certain requirements~~.

The bill would permit the Governor, or one or more officials designated by the Governor, to identify existing or proposed regulations and other requirements, and would require a member of the commission

to review those requirements *and to issue findings*. ~~to determine if they meet specified criteria. The bill would prohibit a state or local agency from adopting or maintaining a requirement found not to meet the specified criteria, unless the state or local agency makes a specified finding, thereby imposing a state-mandated local program by imposing new requirements upon local agencies.~~

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

(2) No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be cited, as the
2 Petroleum Infrastructure Reliability Act of 2004.

3 SEC. 2. The Legislature hereby finds and declares all of the
4 following:

5 (a) California's supply of transportation fuel is not keeping
6 pace with growing demand.

7 (b) California consumers desire to use the cleanest available
8 transportation fuels. California has been a pioneer in the

1 development of cleaner burning gasoline and other cleaner
2 burning transportation fuels.

3 (c) In the past two decades, the number of petroleum refineries
4 in California and the nation has declined, and no new refineries are
5 anticipated in California.

6 (d) It is becoming more difficult for California refiners to
7 improve reliability, improve efficiency, and make incremental
8 capacity increases to meet demand growth for cleaner burning
9 transportation fuels. Imports of finished cleaner burning
10 transportation fuels and blending stocks are now critical to
11 balancing supply and demand in California.

12 (e) Ports, marine terminals, refineries, pipelines, terminals, and
13 other elements of the California petroleum infrastructure are
14 proving to be inadequate for producing and handling increased
15 volumes of cleaner burning transportation fuels.

16 (f) California faces potentially serious transportation fuel
17 imbalances over the next several years, which necessitate
18 immediate action by the state on a statewide basis.

19 (g) The purpose of this act is to respond to the problems facing
20 the state by promoting incremental investments in new, more
21 reliable, more efficient, and environmentally superior components
22 of the California petroleum infrastructure, and to assist persons
23 proposing to construct and operate petroleum infrastructure
24 facilities, without in any manner compromising environmental
25 protection.

26 SEC. 3. Section 12079 is added to the Government Code, to
27 read:

28 12079. (a) The Governor shall appoint a statewide petroleum
29 infrastructure facilitator in the State Energy Resources
30 Conservation and Development Commission to investigate and
31 intervene in rulemaking, permitting, and other proceedings by
32 state agencies that affect petroleum infrastructure projects in the
33 state, and to suggest best practices and procedures for permit
34 streamlining.

35 (b) The Governor may authorize and direct the chair of the
36 State Energy Resources Conservation and Development
37 Commission to designate individual members of the commission
38 to investigate and intervene in agency rulemaking, permitting, and
39 other proceedings affecting petroleum infrastructure projects in

1 the state and to suggest best practices and procedures for permit
2 streamlining.

3 (c) Not more than 90 days after the Governor appoints a
4 statewide petroleum infrastructure facilitator pursuant to
5 subdivision (a), ~~all state agencies~~ *a state agency that adopts*
6 *regulations, issues permits, or conducts other proceedings that*
7 *affect petroleum infrastructure projects* shall do all of the
8 following:

9 (1) Identify and list all permits required by the agency for
10 petroleum infrastructure projects and related facilities in the state.

11 (2) Describe all current procedures utilized in practice for
12 streamlining and expediting permitting for petroleum
13 infrastructure projects.

14 (3) Identify and list all laws, rules, regulations, policies,
15 guidelines, and permit conditions that inhibit or restrain petroleum
16 infrastructure prospects.

17 (d) Not more than 120 days after ~~appointment pursuant to~~
18 ~~subdivision (a)~~ *receiving the information described in subdivision*
19 *(c)*, the statewide petroleum infrastructure facilitator shall do all
20 of the following:

21 (1) Compile and, upon request, make available to persons
22 proposing to modify, construct, or operate petroleum
23 infrastructure projects, all available guidance documents and other
24 information on permitting petroleum infrastructure projects.

25 (2) Upon request of applicants, provide permitting assistance
26 to persons proposing to modify, construct, or operate petroleum
27 infrastructure projects, including, but not limited to, assistance in
28 working with local governments in ensuring that local permits,
29 land use authorizations, and other approvals made at the local level
30 are undertaken in the most expeditious manner feasible without
31 compromising public participation or environmental protection.

32 (3) Upon request of applicants, intervene and participate as a
33 party in rulemaking, permitting, and other proceedings by a state
34 agency that affect petroleum infrastructure projects, to streamline
35 the process, to preserve existing petroleum infrastructure
36 efficiencies and capacity, and to increase petroleum infrastructure
37 efficiencies and capacity.

38 (e) The statewide petroleum infrastructure facilitator shall
39 work with the Legislature to introduce and enact legislation as

1 expeditiously as possible to streamline and expedite permitting for
2 petroleum infrastructure projects in the state.

3 (f) In carrying out the duties imposed pursuant to this section,
4 the statewide petroleum infrastructure facilitator shall consult
5 with all of the following:

6 (1) The Chair of the State Energy Resources Conservation and
7 Development Commission.

8 (2) The Chair of the State Air Resources Board.

9 (3) The Secretary for Environmental Protection.

10 (4) The Secretary of the Resources Agency.

11 (5) The Director of the Governor's Office of Planning and
12 Research.

13 (6) Representatives from the United States Environmental
14 Protection Agency, the United States Department of Energy, the
15 United States Department of the Interior, and other affected
16 federal agencies, as appropriate.

17 (7) Representatives of local and regional agencies, including,
18 but not limited to, air pollution control districts and air quality
19 management districts.

20 (g) This section shall remain in effect only until January 1,
21 2010, and as of that date is repealed, unless a later enacted statute
22 that is enacted before January 1, 2010, deletes or extends that date.

23 SEC. 4. Section 42321 of the Health and Safety Code is
24 amended to read:

25 42321. The Legislature hereby finds and declares all of the
26 following:

27 (a) California's air pollution control programs have been
28 among the most successful efforts in the country to reduce air
29 pollution and to protect public health and the environment.

30 (b) It is in the interest of the people of the state, particularly
31 during times of economic difficulty, to enact laws that improve the
32 processes by which businesses comply with environmental and air
33 quality laws, without sacrificing the protection of public health
34 and the environment.

35 (c) The purpose of this article is to ~~do both of the following:~~

36 ~~(1) Require districts to review their permit programs and to~~
37 ~~institute new, efficient procedures that will assist businesses in~~
38 ~~complying with regional, state, and federal air quality laws in an~~
39 ~~expedited fashion, without reducing protection of public health~~
40 ~~and the environment.~~

1 ~~(2) Require~~ *require* the state board to assist applicants and
2 districts in identifying and instituting new, efficient procedures to
3 assist applicants for permits for petroleum infrastructure projects
4 in complying with regional, state, and federal air quality laws in
5 an expedited fashion, for the purpose of preserving the efficiencies
6 and capacity of existing petroleum infrastructure and increasing
7 the efficiencies and capacity of the petroleum infrastructure,
8 without reducing protection of public health and the environment.

9 SEC. 5. Section 42322.7 is added to the Health and Safety
10 Code, to read:

11 42322.7. (a) On or before February 1, 2005, the state board
12 shall consult with the California Air Pollution Control Officers
13 Association, the California Environmental Protection Agency, the
14 Resources Agency, the State Energy Resources Conservation and
15 Development Commission, the United States Environmental
16 Protection Agency, other states, public and private regulated
17 entities, and other interested persons regarding successful methods
18 and best practices for streamlining air quality permits and other
19 permits that may be required for petroleum infrastructure projects.

20 (b) On or before ~~March 1~~ *June 30*, 2005, the state board shall
21 identify permit streamlining practices, including, but not limited
22 to, successful practices implemented by the districts as directed by
23 Sections 42322 and 42322.5, and ~~shall~~ *may* adopt a complete list
24 of permit streamlining techniques, including, but not limited to, all
25 of the following:

26 (1) Provisions for same day permit issuance for qualified
27 petroleum infrastructure projects.

28 (2) Streamlined procedures for hiring and relying on certified
29 permit application reviewers for petroleum infrastructure projects.

30 (3) Requiring that the districts determine whether an
31 application for a petroleum infrastructure project is complete, not
32 more than 15 days after receiving the application.

33 (4) Review, avoidance, and deletion of involuntary limitations
34 on the throughput of any components of the state petroleum
35 infrastructure.

36 (c) The state board ~~shall~~ *may* require the districts to adopt, no
37 later than May 1, 2005, and implement, no later than July 1, 2005,
38 the permit provisions and procedures identified by the state board
39 under subdivision (b).

(d) The state board ~~shall~~ *may* continuously identify permit streamlining practices to preserve the efficiencies and capacity of existing petroleum infrastructure and to increase the efficiencies and capacity of petroleum infrastructure in the state, and ~~shall~~ *may* require the districts to adopt and implement all other best practices identified by the state board on an expeditious basis.

(e) The state board may waive the requirement for a district to implement a best practice if the district can demonstrate both of the following:

(1) That its existing district program performs at least as effectively as a streamlining practice identified under subdivision (b) or (d).

(2) That the district program has, in actual practice, resulted in simplifying and expediting permitting for petroleum infrastructure projects.

(f) The state board shall revise its best practices list after holding a public meeting, and the districts shall adopt the revised practices at least annually.

(g) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2010, deletes or extends that date.

SEC. 6. Chapter 6.7 (commencing with Section 25580) is added to Division 15 of the Public Resources Code, to read:

CHAPTER 6.7. PETROLEUM INFRASTRUCTURE PROJECTS

25580. For the purposes of this chapter, “petroleum infrastructure projects” include marine terminals, port facilities, product storage facilities, pipelines, land terminals, refinery projects, and related kinds of facilities identified by the commission as being necessary to assure a consistent and reliable supply of cleaner burning gasoline, ultra low sulfur diesel fuel, and other petroleum products to California consumers.

25582. The Legislature hereby finds and declares all of the following:

(a) California is making increasing and new demands for petroleum products, including demands for alternative and cleaner burning transportation fuels.

(b) It is in the best interests of the people of the state to enact laws that improve the processes by which California fuel

1 producers and importers comply with environmental, land use,
2 and siting laws, without sacrificing the protection of public health
3 and the environment.

4 (c) Certain projects are vital to ensuring the reliability, to
5 preserving the existing efficiencies and capacity, and to increasing
6 the efficiencies and capacity of state ports, refineries, terminals,
7 pipelines, and other petroleum infrastructure facilities. It is in the
8 best interests of the people of the state to streamline permitting for
9 petroleum infrastructure projects to preserve and increase the
10 efficiencies and capacity of the California petroleum
11 infrastructure.

12 (d) Rules, regulations, policies, guidelines, and permit
13 conditions adopted by local, regional, and state regulatory
14 agencies may significantly impair the ability of petroleum
15 infrastructure facilities to produce a consistent and reliable supply
16 of cleaner burning gasoline and other products for California
17 consumers.

18 (e) It is in the best interests of the people of the state for the
19 commission to review regulations to ensure continued, consistent,
20 and reliable operation of California petroleum infrastructure
21 facilities and reduce the need for California to import gasoline.

22 25584. (a) On or before February 1, 2005, the commission
23 shall initiate consultations with the facilitator appointed pursuant
24 to subdivision (a) of Section 12079 of the Government Code, the
25 California Environmental Protection Agency, the Resources
26 Agency, the United States Environmental Protection Agency,
27 other states, air districts, public and private regulated entities,
28 California ports, and other interested persons, regarding
29 successful methods and best practices for streamlining permits,
30 leases, and other governmental authorizations and entitlements
31 that may be required by petroleum infrastructure projects.

32 (b) The consultation required pursuant to subdivision (a) shall
33 include a complete report of agencies' and the regulated entities'
34 experiences with facility siting conducted by the commission,
35 similar processes in other states, and similar processes in this state.

36 (c) On or before ~~March~~ June 30, 2005, the commission shall
37 identify permit streamlining practices, including, but not limited
38 to, successful practices implemented by the State Air Resources
39 Board under Section 42322.7 of the Health and Safety Code, and
40 shall publish for public comment a complete list of permit

streamlining techniques for petroleum infrastructure projects, including, but not limited to, all of the following:

(1) Developing and implementing partially or fully consolidated permit programs for petroleum infrastructure projects.

(2) Adopting criteria for the types of permitting actions for petroleum infrastructure projects eligible for streamlining and for a simplified permitting process.

(3) Adopting streamlined lists and criteria for application completeness determinations for petroleum infrastructure projects.

(4) Adopting mandatory deadlines for actions on permits for petroleum infrastructure projects, similar to those enforceable by appeal under Section 42302 of the Health and Safety Code.

(5) Avoiding and eliminating limitations on the throughput of components of the California petroleum infrastructure.

(6) Relying on actual emissions performance standards that allow the maximum flexibility in utilizing existing efficiencies and capacity and increasing efficiencies and capacity of the California petroleum infrastructure.

(d) On or before ~~May 1~~ *December 31*, 2005, the commission shall submit a report to the Governor and the Legislature describing the results of the consultation pursuant to this section and the list published pursuant to subdivision (c), together with detailed recommendations for establishing new, streamlined processes for permitting petroleum infrastructure projects in California ~~in a manner that meets all of the following criteria:~~.

~~(1) Requires a permit that is exempt from review under the California Environmental Quality Act (Division 13 (commencing with Section 21000)), or for which review is satisfied by a negative declaration or a mitigated negative declaration, to be issued not more than 60 days after the application is deemed complete.~~

~~(2) Requires a partly or completely consolidated permit to be issued not more than 180 days after the application is determined or deemed complete.~~

~~(3) Requires a local, regional, state or federal permit or other governmental authorization excluded from a consolidated permit process to be expedited by the permitting authority.~~

~~(4) Requires lists and criteria for determining application completeness to include only information that significantly enables the permitting authorities to initiate permit processing.~~

~~(5) Requires the permitting process to avoid and reduce vulnerabilities and gaps in the California petroleum infrastructure, preserve the efficiencies and capacity of existing petroleum infrastructure, and increase the efficiencies and capacity of the California petroleum infrastructure.~~

~~(6) Allows additional investments to be made to preserve and increase the capacity, efficiencies, reliability, and environmental performance of the California petroleum infrastructure.~~

25586. ~~(a) The Governor, or one or more officials designated by the Governor, may identify existing or proposed rules, regulations, plans, policies, guidelines, permit conditions, or other requirements affecting petroleum infrastructure facilities and refer them to the commission for review in accordance with the criteria in subdivision (d) of Section 22584.~~

~~(b) The chair of the commission shall designate a single commissioner to review requirements and issue findings affecting petroleum infrastructure facilities that are referred under subdivision (a).~~

~~(c) The designated commissioner shall promptly review and issue findings on whether referred requirements meet the criteria in subdivision (d) of Section 25584.~~

~~(d) A state or local agency may not adopt or maintain in effect any requirement reviewed pursuant to this section that is found to not meet the criteria in subdivision (d) of Section 25584, unless the state or local agency addresses each finding made by the designated commissioner pursuant to subdivision (c), and finds that specific considerations override the criteria in subdivision (d) of Section 25584.~~

25588. ~~(a) In taking any action under this chapter, the commission may adopt rules and regulations as necessary to ensure that relevant duties pursuant to this chapter are carried out.~~

~~(b) To implement this section, the commission may adopt emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that chapter, including, but not limited to, Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of~~

~~Administrative Law to be necessary for the immediate preservation of the public peace, health, safety, and general welfare.~~

~~25590. This chapter shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2010, deletes or extends that date.~~

~~SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.~~

~~However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.~~

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.